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Supreme Court, U.S.
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No. 98-1121

In The

Supreme Court of the United States

October Term, 1998

DAVID RUIZ, et al.,

Petitioners,

v.

REPRESENTATIVE JOHN CULBERSON and SENATOR J.E. ("BUSTER") BROWN,

Respondents.

On Petition For Writ Of Certiorari To The Fifth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The United States, though nominally a plaintiff-intervenor in the district court, has not actively participated in this case in years. The government did not participate at all in the appeal that gives rise to the instant petition for writ of certiorari. It nonetheless has filed a brief in opposition ("USBr.").

Perhaps because it did not participate below, the United States misconceives the central issue presented by the Petition. It states that although the courts of appeals have reached divergent results on what "interest" an intervenor must have to satisfy Rule 24(a)(2), this case does not present that question and "therefore" the petition should be denied. USBr. at 6-7, 9-10. The government argues that this case is not a "suitable vehicle" for "clarification" of the Rule 24(a)(2) "interest" requirement. *Id.* at 10. Petitioners wholeheartedly agree. The issue presented by the Petition has nothing to do with Rule 24(a)(2). The issue is whether prospective intervenors must possess Article III standing, regardless of whether intervention is sought under subsection (a)(2) of Rule 24 or, as in this case, subsection (a)(1). On *that* important issue there is clearly a conflict among the Circuits that requires resolution by this Court. In conflict with the decisions of three other circuits, the court below held that no Article III standing is required for the intervention in this case.

Not only do respondents Brown and Culberson lack Article III standing, but they seek to have litigated novel

federal constitutional issues not raised by any existing party, and they seek relief (nullification of the district court's Final Judgment) not sought by any existing party. The government mistakenly argues that Brown and Culberson are seeking the "same relief" as the state defendants and the "same ultimate disposition" of the case. USBr. at 8-9. In fact, they expressly seek relief, on Tenth and Eleventh Amendment grounds, going far beyond the relief sought by the state defendants, which is simply termination of prospective injunctive relief pursuant to the Prison Litigation Reform Act. The government makes reference to this in a footnote (USBr. at 9, n.2), but concludes that if Brown and Culberson press their claims, "nothing in the court of appeals' opinion suggests that the district court may or should entertain their claims." This, together with the government's argument that Brown and Culberson will not have the right to appeal an adverse decision or otherwise enjoy "the full rights of a party" (*id.* at 7, 10), demonstrates that the court of appeals plainly erred in holding that they have an "unconditional right" to intervene within the meaning of Rule 24(a)(1). Either they have an unconditional right to litigate the claims they expressly raised in their motion to intervene, or they should not have been granted intervention under the Rule. And, as the Petition before the Court urges, persons claiming a right to intervene must have Article III standing.

Accordingly, the Court should grant the petition for certiorari to decide whether Congress can confer on

persons without Article III standing an unconditional right to litigate in federal court.

Respectfully submitted,

Dated: March 1999

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